

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4869 GIBRALTAR Thursday 24th June 2021

LEGAL NOTICE NO. 310 OF 2021

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (PASSPORT RIGHTS AND TRANSITIONAL PROVISIONS) (AMENDMENT No. 2) (EU EXIT) REGULATIONS 2021

In exercise of the powers conferred on the Minister by sections 11 and 15 of, and Schedule 3 to, the European Union (Withdrawal) Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Financial Services (Passport Rights and Transitional Provisions) (Amendment No. 2) (EU Exit) Regulations 2021.

Commencement.

2. These Regulations are deemed to have come into operation on 1st January 2021.

Amendment of Passport Rights and Transitional Provisions Regulations.

3.(1) The Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020 are amended as follows.

(2) In regulation 3, in the definition of “permission”, for “a regulated” substitute “an”.

(3) In regulation 11, after the definition of “EEA AIFM”, insert–

““EEA UCITS” means a UCITS which is authorised in an EEA State in accordance with Article 5 of the UCITS Directive (as it applies in the European Union);”.

(4) In the heading to regulation 13, after “authorisation”, insert “: EEA AIFMs.”.

(5) After regulation 13, insert–

“Temporary arrangements for EEA UCITS

Temporary recognition for EEA UCITS.

13A.(1) If this regulation applies, an EEA UCITS is to be treated during the relevant period as a recognised scheme for the purposes of Chapter 5 of Part 18 of the Act.

- (2) This regulation applies in relation to an EEA UCITS where the EEA UCITS–
- (a) would have been entitled to be promoted in or from Gibraltar before IP completion day; and
 - (b) has notified the GFSC that it wishes to have temporary recognition under sub-regulation (1), in order to carry on activities in Gibraltar during the relevant period.

(3) A notification under sub-regulation (2)(b), must be–

- (a) made in the form and manner, and during the period, that the GFSC may direct; and
- (b) accompanied by any information that the GFSC may reasonably require,

and the GFSC may give different directions to different persons or categories of person and vary or revoke a previous direction.

Deemed authorisation: EEA UCITS operator, trustee or depositary.

13B.(1) Sub-regulation (2) applies to a person who–

- (a) is on IP completion day the operator, trustee or depositary of an EEA UCITS that is recognised by virtue of regulation 13A; or
- (b) at any time after IP completion day becomes the operator, trustee or depositary of such an EEA UCITS.

(2) The person is to be treated as an authorised person for the purposes of the Act, so long as the EEA UCITS remains recognised by virtue of regulation 13A, in respect of the following activities–

- (a) any activity, appropriate to the capacity in which the person acts in relation to the EEA UCITS, of the kind described in paragraphs 93 to 94B of Schedule 2 to the Act; or
- (b) any activity in connection with, or for the purposes of, the EEA UCITS.”.

(6) In regulation 14–

(a) for sub-regulation (1), substitute–

“(1) Where–

- (a) an EEA firm has temporary authorisation or restricted temporary approval;

- (b) an EEA AIFM has deemed authorisation under regulation 13;
- (c) an EEA UCITS has temporary recognition under regulation 13A; or
- (d) an operator, trustee or depositary of an EEA UCITS has deemed authorisation under regulation 13B,

and the person's authorisation to conduct the corresponding activity in its home State is subject to a requirement imposed by its home State regulator, the person's temporary authorisation or restricted temporary approval, temporary recognition or deemed authorisation is to have effect subject to the same requirement as if it were imposed by the GFSC.”; and

- (b) in sub-regulation (2), omit “regulated”.

(7) In regulation 15–

- (a) in sub-regulation (1), for paragraph (c), substitute–

“(c) an EEA AIFM which has deemed authorisation under regulation 13 or the regulated activity which the AIFM carries on by virtue of that deemed authorisation; or

- (d) an EEA UCITS which has temporary recognition under regulation 13A;

(e) an operator, trustee or depositary of an EEA UCITS which has deemed authorisation under regulation 13B or the regulated activity which the operator, trustee or depositary carries on by virtue of that deemed authorisation,”; and

- (b) in sub-regulation (2), for paragraph (c), substitute–

“(c) an EEA AIFM's deemed authorisation;

- (d) an EEA UCITS's temporary recognition; or

(e) an operator's, trustee's or depositary's deemed authorisation,”.

Dated: 24th June 2021

A J ISOLA
Minister with responsibility for financial services

EXPLANATORY MEMORANDUM

These regulations are made under the European Union (Withdrawal) Act 2019 and address deficiencies in retained EU law arising from Gibraltar's withdrawal from the European Union.

The regulations, which amend the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020, provide for the temporary recognition of EEA UCITS and grant temporary permission to the operators, trustees and depositaries of those UCITS.